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**Written Submission to the House Committee on Ways and Means  
Hearing on Tax Reform and Charitable Contributions  
February 14, 2013**

**Submitted by  
Lorie A. Slutsky, President  
The New York Community Trust**

**To Chairman Camp, Ranking Member Levin, and Members of the Committee:**

My name is Lorie Slutsky and I have been the President of the New York Community Trust (The Trust) since 1990. We serve the New York City metropolitan region, including Westchester County and Long Island. We have more than \$2 billion in assets and last year we made approximately \$140 million in grants from our unrestricted, field of interest, scholarship and donor-advised funds. We have granted over \$1.4 billion to local charities in the past 10 years alone, addressing local and regional needs.

At the hearing, three of my colleagues from the field – Terry Mazany from the Chicago Community Trust, Alicia Philipp from the Community Foundation for Greater Atlanta, and Brent Christopher from the Communities Foundation of Texas – presented oral testimony that focused on what community foundations do, how they are different from private foundations, and how the tax deduction for charitable contributions is vital to their work.

Each of the three mentioned how donor-advised funds (DAFs) are essential to the work of community foundations – in many ways, they are our lifeblood, particularly for the hundreds of newer (and smaller) community foundations around the country – but they did not have the opportunity to go into much detail. Given that the last time Congress seriously addressed DAFs was eight years ago, during consideration of the Pension Protection Act of 2006 (PPA), I wanted to provide the Committee with written testimony focusing specifically on DAFs and how they work, so that staff and interested parties who were not involved in the debate over PPA could reference the hearing record if they wanted more information on DAFs. The Trust has a unique perspective on this issue, given that we established the very first donor-advised fund back in 1931.

**HISTORY AND BACKGROUND ON DONOR-ADVISED FUNDS**

For almost a century, community foundations have been building permanent charitable resources to meet the current needs of their communities and the unforeseen

needs of the future. And for more than 85 years, the Trust, through the generosity of donors past and present, has supported nonprofit organizations in the New York metropolitan area that work daily to ensure that our community is a vital and healthy place in which to live and work. When we started in 1924, our sole mission was to distribute to nonprofit organizations the income from charitable trusts set up by will and held by New York City banks. The Trust's founders were men of vision who understood the power of an institution that could employ the combined charitable passions of individuals to meet a broad variety of community needs. They also understood that contemporary donors could not anticipate the compelling issues that would confront their successors—and they were committed to ensuring that adequate resources would be available for the future.

In those early days, our donors set up permanent funds through bequests, trusting tomorrow's leaders to spend it wisely. Of Trust assets of slightly more than \$2.1 billion, \$860 million is held in more than 1,300 donor-advised funds, ranging in size from \$5,000 up to \$114 million. These funds routinely pay out more than 10 percent of their assets to charity annually; in the last three years, the total payout rate from our DAFs ranged from 10.9 to 13.1 percent. (N.B.: our payout is regularly more than twice that required of private foundations, showing the commitment of our donors to the community.) The remaining \$1.3 billion of our charitable assets is held in permanent funds, with the lion's share in unrestricted and field-of-interest funds.

As noted above, we opened our first "donor-advised" fund in 1931, before there was even a name for it—and long before there were any specific laws or regulations. During her lifetime, this first "donor advisor" made suggestions to the staff of The Trust as to charitable distributions from the fund. When she died, the assets remaining in the advised fund became part of our discretionary grantmaking program—a program that relies on a professional staff to assess community needs, investigate nonprofits, vet their projects and finances, and recommend grants to our distinguished volunteer board.<sup>1</sup> Grants we make from the original fund she created, which now has \$4 million in assets, support projects to help low-income elders keep their homes and apartments; train poor, young women to become licensed day-care providers; reduce environmental health hazards in substandard housing; and much more.

A profoundly important social contract was established with that first donor-advisor: in consideration for the privilege of making grant recommendations, money would be left in the fund for future generations. That is still our expectation and is characteristic of our relationship with most donors to The Trust.

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<sup>1</sup> It is important to reinforce this point about discretionary grantmaking. Many community foundations (particularly older foundations that have been in existence for more than one generation) have two separate and distinct grantmaking operations. On the one hand, The Trust grants millions every year from our DAF program, where donor-advisors recommend grants out of funds that they have set up (or we recommend worthy nonprofits to them in areas they are interested in). But our discretionary grantmaking program runs very similarly to a private foundation, where we have a competitive grant process and program officers that oversee the various grantmaking areas determined by the purposes of funds created by our donors and by priorities set by our board. As a very general guideline, DAFs make up one-third of our assets but two-thirds of our annual grantmaking; the ratios are the opposite for our permanent funds.

The philanthropic world has changed since 1931, and 21<sup>st</sup> century donors have significantly more choice than they did years ago. For example, consider the rise of commercial gift funds. When the IRS gave public charity status to donor-advised funds sponsored by financial institutions, the notion of community philanthropy pioneered by community foundations morphed into individual charitable checking accounts, without the expectation of, or mechanism for, creating a permanent commitment to one's own community. When someone sets up a donor-advised fund with us, or makes an unrestricted contribution, they are making a long-term commitment to improving the quality of life in a place where they have personal ties. Commercial gift funds, like those sponsored by several mutual fund companies, may provide choice for donors, but they do not foster that long-term commitment to community.

In short, donor-advised funds are not a newfangled tool to avoid taxes; they are a longstanding approach developed by community foundations and addressed in Treasury regulations to enhance and encourage donors to invest charitably in the immediate and future needs of hundreds of communities throughout the country.

## **BASIC DEFINITIONS**

A donor-advised fund (DAF) is a charitable giving vehicle administered by a public charity and created for the purpose of managing charitable donations on behalf of an organization, family, or individual. A DAF allows donors to establish and fund the account by making irrevocable, tax-deductible contributions to the charitable sponsor. Donors then recommend grants from those funds to other charitable organizations. DAFs provide a low cost, easy-to-administer, flexible vehicle for charitable giving that often (but not always) serves as a substitute for a family setting up a private foundation.

Because the fund is part of a public charity, donors receive the maximum tax deduction available, while avoiding excise taxes and other restrictions imposed on private foundations. The organization administering the DAF has full control over the contribution, granting the donor "advisory" status. As such, community foundations and other sponsors of DAFs are not legally bound to follow the donor's grant recommendations. Most organizations that offer donor advised funds will only make grants from these funds to other public charities, and can perform due diligence on the grantee (more on this below).

There are more than 2.5 times as many DAFs as private foundations, and the assets in DAFs are increasing (in percentage terms) far more quickly than other charitable giving vehicles.

It may be helpful to think of a donation to a DAF like the planting of a tree. The initial DAF donation is the planting of the seed. Then the fund grows over time, thanks to additional gifts and sound investment management. The fund then "bears fruit" every season in the form of grants to charitable organizations, and can continue to do so, year after year, producing more fruit each season. The model allows for a single gift to generate

more impact over time—more than double, over 20 years—than it could achieve as a lump-sum donation.

Just one example: In 1994 a donor-advised fund was established with approximately \$340,000. Since that time, it has made grants of \$364,000—more than the original principal—and has assets of \$380,000 today. It is the gift that keeps on giving.

## **DONOR-ADVISED FUNDS PROMOTE EFFECTIVE CHARITABLE GIVING WHILE IMPROVING TAX COMPLIANCE**

Donor-advised funds encourage charitable giving by individuals who want to engage regularly in thoughtful, responsible philanthropy and be part of a permanent charitable institution that will respond to the community's needs now and in the future. They offer a community, with all of its complexity and diversity, the opportunity to receive support from an array of donors whose passions and commitments reflect that very diversity and complexity.

The model of a community foundation making grants through donor-advised funds is something that improves the overall efficiency and effectiveness of the charitable sector because of the due diligence that we provide for our donors. As a “sponsoring organization” under the nomenclature of the Pension Protection Act of 2006, a community foundation like the Trust provides its donor advisors with professional grantmaking staff and knowledge of the community and its needs. In addition, a donor or advisor may seek our advice to help tailor a grantmaking strategy to confront a particular problem or help a particular population (e.g., children, people with disabilities, the elderly).

We perform a rigorous, independent investigation of any charity recommended for support. The charitable sector as a whole benefits from this kind of review because it imposes a discipline on prospective grantees, who know that both their fiscal and program operations are being scrutinized. As a sponsoring organization, we take responsibility for determining that grantees have current financial statements and/or audits, operate with independent boards of directors, have timely filed their Forms 990 with the IRS, and use our grants exclusively for tax-exempt charitable purposes. By contrast, individuals or families who choose to start private foundations rather than DAFs must perform this due diligence on their own.

And we do all of this at very modest cost, leaving more funds available for grantmaking. Currently, the Trust's typical assessment for DAFs is 50 basis points (0.5%) of the average annual market value. The start-up of a private foundation runs in the thousands of dollars, and annual accounting, filing, and legal fees also run in the thousands. This is not to say that private foundations are inferior to a donor-advised funds; it is simply to point out that we provide tremendous value to our donors at very modest cost, and undertake the due diligence measures at the sponsoring organization level, freeing up our donors to focus on their charitable interests.

## **POLICY CONCERNS FOR COMMUNITY FOUNDATIONS AND DONOR-ADVISED FUNDS**

### Maintenance of Charitable Tax Deduction

Obviously, as public foundations that both accept donations and make grants, community foundations rely heavily on the charitable tax deduction, so any change in tax law that affects how (and how much) people give to charity will affect us directly. It is our view that while the charitable tax deduction may not necessarily have a major impact on *whether* people give to charity, changes to the deduction will have a very significant impact on *how much* people choose to give. Any change to the deduction that results in reduced giving will have a deleterious impact in local communities across the country.

### Recognition that Gifts to Donor-Advised Funds are Gifts to Public Charities; Expansion of IRA Charitable Rollover to Include Donor-Advised Funds

Due to concerns over a few abuses that received public attention, DAFs have been excluded from several recent provisions designed to spur increased charitable giving. For example, the tax advantages offered for Hurricane Katrina-related giving and the IRA charitable rollover were not made available for contributions to donor-advised funds. This exclusionary language conveys the mistaken impression that DAFs are inherently flawed and that contributions to these funds are not, in fact, completed gifts.

The 2006 PPA reforms addressed the handful of concerns about DAFs. Enforcement of existing regulations can surely find and punish those individuals who violate the law without penalizing the many generous people who use their funds to do good.

As a result, it is our view that statutory language that excludes DAFs from these incentives is unnecessary, and Congress should not simply extend the IRA rollover in its current form out of expediency (i.e., simply taking existing language and changing the expiration date, as is often the case during consideration of tax extenders). The section excluding DAFs from the IRA charitable rollover, and from any future legislation designed to spur giving after a crisis or natural disaster, should be struck from further extensions. We would be pleased to provide any additional data or testimony that the Committee may desire on this issue.

## **CONCLUSION**

Community foundations and similar charitable institutions have twin goals: to serve living donors and meet immediate community needs; and to develop endowments that provide the resources to respond to the needs we cannot now imagine. Encouraging donors to think in terms of contributing to a permanent fund buttresses both goals. At The Trust, donor-advised funds, if not fully expended, become unrestricted funds of The Trust after two generations of advisors. It is this combination of grants from advised and permanent funds that makes the Trust an irreplaceable source of support for the voluntary institutions that are a vital part of American democracy.

I hope that our written testimony provides the Committee with some useful background on donor-advised funds, as well as information on the benefits we provide and the challenges we face. We stand ready to answer any questions or provide further testimony as the debate over tax reform continues.

## Supplement to Submission of Lorie A. Slutsky dated February 28, 2013

The attached submission to the House Committee on Ways & Means is written testimony of Lorie A. Slutsky on behalf of The New York Community Trust.

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